the rule of *caveat emptor* applies, and there is no implied warranty that the premises are fit for the purposes for which they are leased. *The Shinkle, Wilson & Kreis Co.* v. *Birney & Seymour,* 68 Ohio St. 328; UNDERHILL, LANDLORD AND TENANT, § 477. However, it is generally admitted that the lessor is liable for loss or injury caused by latent defects in the leased premises, of which he had actual knowledge at the time of making the lease, but which he did not disclose to the lessee. *Mansell* v. *Hands,* 235 Mass. 253; *Johnston* v. *Nichols,* 83 Wash. 394; *Kurtz* v. *Pauly,* 158 Wis. 534. See also note to *Walsh* v. *Schmidt,* 34 L. R. A. (n. s.) 798.

LANDLORD AND TENANT—PROVISION IN LEASE NOT TO ASSIGN WITHOUT CONSENT OF LESSOR—EFFECT OF BREACH.—Petitioners leased to two persons with a provision against assigning or subletting without the written consent of the lessors. A corporation was to be formed by the lessees and it was agreed that they might assign to it on a form which was provided and which bore a place for the lessors' consent. The lessees assigned to this corporation, but not by means of the form provided and without the lessors' consent. After occupation for some time, the corporation became bankrupt, and notwithstanding a notice by the lessors that the lease was forfeited, it was decreed that the trustee in bankruptcy was entitled to the leasehold. Upon review, the court *held,* there had been no effective transfer of the lease to the corporation, and reversed the decree. *In re Lindy-Friedman Clothing Co., Inc.* (U. S. D. C., Ala., 1921), 275 Fed. 453.

It is undisputed that a lease may be assigned or sublet unless the lessee is restrained by statutory provision or by the lease itself. Under the latter category the effect of a breach differs, depending on whether the restraint is by a covenant or by a condition with a power of re-entry. 1 TIFFANY LANDLORD AND TENANT, § 152j; 2 UNDERHILL, LANDLORD AND TENANT, § 624. If it is by a covenant, the general rule is that an assignment in breach of it passes the title of the leasehold to the assignee. *Williams* v. *Earle,* L. R. 3 Q. B. 739; *Meyer* v. *Alliance Investment Co.,* 84 N. J. L. 450. "A covenant not to do a thing really implies the power to do it. An assertion of the breach affirms that the covenantor has effectively done what he covenanted not to do." *Shirk* v. *Adams,* 130 Fed. 441. The only remedy of the lessor is an action for damages against the covenantee. *People* v. *Gilbert,* 64 Ill. App. 203. It is said in *Wray-Austin Machinery Co.* v. *Flower,* 140 Mich. 452, that the assignment works a forfeiture, but the cases cited do not support this *dictum.* See also *Rees* v. *Andrews,* 169 Mo. 177; *Emery* v. *Hill,* 67 N. H. 330. However, if the restraint on assignment is imposed as a condition the lessor may re-enter for the breach and cut off the assignee's estate. *Kew* v. *Trainor,* 150 Ill. 150; *Shattuck* v. *Lovejoy,* 74 Mass. 204. But the breach does not *ipso facto* terminate the estate. It passes to the assignee and is valid until re-entry by the lessor. *Keegan* v. *Heileman Brewing Co.,* 129 Minn. 496; *Taylor* v. *Marshall,* 255 Ill. 545. In the principal case there was a right of re-entry reserved to the lessors for a violation of any provision of the lease. But the opinion of the court is rather obscure as to whether it considered the provision restricting assignment as a covenant or as a

condition. If the former, the title of the lease should be in the bankrupt corporation. *In re Pennewell,* 119 Fed. 139; *Hague* v. *Ahrens,* 53 Fed. 58. If the latter, the notice of forfeiture given by the lessors divested the estate in the corporation, and the result reached in the case is correct.

LAW OF NATIONS—SEIZURE AND SALE OF ENEMY MERCHANT SHIP EXTINGUISHES PRIOR LIEN.—The Nyanza (Esslingen), a German merchant ship, arrived at Manilla on the 9th of August, 1914, carrying a cargo belonging to libelant, a French national. Upon demand of libelant's Manilla agent the master refused to deliver the cargo, and subsequently allowed the ship to be interned by the United States government. Libelant recovered a judgment against the owners, for loss of cargo, and attached the ship. After the United States entered the war the ship was seized and, by authority of Congress and the President, turned over to the United States Shipping Board. Under authority of the Act of Congress of June 5, 1921, it was sold to the claimant "clear of all claims or liens." Libelant sought to enforce the admiralty lien and the lien obtained by attachment. *Held,* that seizure and sale operated to cut off claims against the ship. *The Nyanza* (D. C., E. D., N. Y., 1921), 276 Fed. 415.

The right of a belligerent to seize and condemn as prize an enemy merchant ship found in the belligerent's port at the outbreak of war is almost undisputed. *The Marie Leonhardt* [1921], P. 1; *The Thalia,* 2 Russ. and Jap. P. C. 116; HALLECK'S INT. LAW, 4th ed., II, 96; 20 MICH. L. REV. 114. The condemnation proceedings may take place even after peace is concluded. *The Blonde and Other Ships* [1921], P. 155; 20 MICH. L. REV. 113. In determining the national character of a ship, courts of prize generally look only to the legal title. A *bona fide* sale of a ship by an enemy, *imminente bello* or *flagrante bello,* is valid. *The Ariel,* 11 Moo. P. C. C. 119; *The Edna* [1919], P. 157. If the ship comes into the possession of the purchaser before seizure the sale is valid, although made *in transitu. The Baltica,* 11 Moo. P. C. C. 141. But mortgages and liens are generally disregarded in prize courts, even when created in good faith. *The Hampton,* 5 Wall. 372; *The Mirianna* (1805), 6 C. Rob. 24. In *The Tobago* (1804), 5 C. Rob. 218, a bottomry bond had been acquired by a national subject, in good faith, before the outbreak of war. In condemning the captured ship, and refusing the national's claim, the court said that "he [the national] acquires the *jus in* [*ad?*] *rem,* but not the *jus in re,* until it has been converted and appropriated by the final process of a court of justice. * * * If there is no change of property there can be no change of national character." Likewise, where the lien is on a neutral ship, in favor of an enemy, the ship cannot be condemned as prize, even *pro tanto. The Ariel, supra.* A limited class of liens may give a *jus in re. The Frances,* 8 Cr. 418; HALLECK'S INT. LAW, 4th ed., II, 115. Although reaching a harsh result, upon principle of international law the instant case is correctly decided. The libelant might look to the generosity of the captor for compensation.